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Technology Center 2100

In re Application of: Capps et al.)
Application No. 09/502,970) DECISION ON PETITION TO
Attorney Docket No. 2300) WITHDRAWAL HOLDING OF
Filed: February 11, 2000) ABANDONMENT UNDER 37 CFR §
For: UNIFIED NAVIGATION SHELL) 1.181(a)
USER INTERFACE)

This is a decision on the petition filed on May 27, 2003 to withdraw the holding of abandonment under 37 CFR § 1.181(a) (Paper No. 8) mailed on March 25, 2003. The abandonment was based upon applicants' failure to respond to the Office action mailed July 2, 2002.

Applicable Prosecution History

Jul 2, 2002	Restriction requirement mailed setting one-month period for reply (Paper No. 7)
Mar 25, 2003	Notice of abandonment mailed (Paper No. 8)
May 27, 2003	Petition filed under 37 CFR § 1.181(a) along with change of address

Issues

The petition includes statements from Mr. Albert S. Michalik that the Office communication mailed July 2, 2002 was not received; and that a search of the file jacket and docket records indicated the Office action was not received. The practitioner has attached two pages of an attorney docket printout for Office communications received through mid-November 2002. The practitioner also states the Notice of Abandonment was mailed to an incorrect address. The correct address should have been "704 228th Avenue NE, Suite 193 Sammamish Washington 98074." A change of correspondence address has been submitted.

Decision

In the absence of any apparent irregularity associated with the mailing of an Office communication, the Office presumes the communication was properly mailed to the address of record. According to MPEP §711.03(c), the showing required to establish nonreceipt of an Office action includes the following:

- a) a statement from the practitioner that the Office action was not received,
- b) a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates the Office communication was not received,
- c) a copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed, and
- d) a reference to the docket record in the practitioner's statement.

The practitioner's statements should be made in regard to records the *address of record at the time of the mailing*. A review of the Office file fails to show evidence the practitioner filed a change of address after the original filing of the declaration until the submission with this petition. While the Notice of Abandonment may have been sent to the "wrong" address, according to the practitioner, there is no evidence that provides an explanation as to why the Notice of Abandonment was mailed to the Sammamish Washington address. Therefore, it appears the July 2002 paper was mailed to the proper address and the Notice of Abandonment was improperly mailed to the wrong address.

Therefore, the submission is deficient because the practitioner has provided incomplete evidence. Specifically, the evidence should be for the Bellevue Washington address at the time of the mailing of the Office communication. If the practitioner filed a change of address prior to the mailing of July 2, 2002, proof of that submission along with the date of the change also should be provided.

The presumption of nonreceipt remains. The petition is **DISMISSED**.

If petitioners desire further review of this decision, petitioners should file a Request for Reconsideration within two (2) months of the mailing date of this decision. Telephone inquiries should be directed to the undersigned at (703) 308-0269.

Josie A. Ballato

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